The article was alleged to be misbranded in that the statement on the label, "Tincture Iodine, U. S. P.," was false and misleading in that it represented that the article was tincture of iodine which conformed to the standard laid down in the United States Pharmacopoeia; whereas it was not.

On March 29, 1938, a plea of guilty was entered on behalf of the defendant and the court imposed a fine of $50.

W. R. GREGG, *Acting Secretary of Agriculture.*

28683. Alleged adulteration of Epsom salt compound tablets. U. S. v. Strong, Cobb & Co., Inc. Demurrer to the information overruled. Tried to the court. Judgment of not guilty. (F. & D. No. 36988. Sample Nos. 7309–B, 7310–B.)

On April 7, 1936, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the district court an information against Strong, Cobb & Co., Inc., Cleveland, Ohio, alleging that on or about March 1, 1934, the defendant sold and caused to be delivered to Liebenthal Bros. Co. at Cleveland, Ohio, quantities of a drug labeled "Epsom Salt Compound Tablets"; that at the time of said sale and delivery the defendant guaranteed to the purchaser that the article was not adulterated or misbranded in violation of the Federal Food and Drugs Act; that on July 5, 1934, the said drug, in the identical condition as when received was shipped by the Liebenthal Bros Co. from the State of Ohio into the State of Pennsylvania; and that it was adulterated in violation of said act.

The information alleged that the article was adulterated in that its strength and purity fell below the professed standard and quality under which it was sold, in that it was represented to be a compound of Epsom salt in the form of tablets; whereas it was composed of phenolphthalein and aloin and an inappreciable amount of magnesium sulphate (Epsom salt).

On May 8, 1936, the defendant filed a demurrer and motion to quash. On June 19, 1936, the said demurrer and motion to quash were argued and overruled with the following opinion:

WEST, *District Judge:* "Overruled, with exception to defendant. The drug sold as 'Epsom Salt Compound Tablets' necessarily has the professed quality of Epsom salts. The fact that it is a compound should not be allowed to affect its quality when the other ingredients are not named. If, as the indictment alleges, the tablets contained two other drugs and an inappreciable amount of magnesium sulphate or Epsom salts, then their purity falls below the professed quality under which they were sold. It is not a question of strength, as in 55 F. (2d) 264, cited by defendant, but of purity; and whatever the effect of the other drugs may be, the tablets are adulterated and impure because their quality and effect do not mainly depend upon Epsom salts."

On February 11 and 14, 1938, the case was tried to the court. At the conclusion of the Government's case a motion was made by counsel for the defendant for a judgment of not guilty and the court sustained the motion with the following opinion delivered orally:

JONES, *District Judge:* "I am going to sustain the motion on two grounds: First, that there was no evidence that the defendant shipped in interstate commerce the drug in question; and, second, I do not find in the evidence any support for adulteration. There is a possible ground for charging misbranding, but that is not contained in the information. The motion of the defendant will be sustained, and the Government may have exceptions."

W. R. GREGG, *Acting Secretary of Agriculture.*

28684. Adulteration of maleic acid tablets. U. S. v. 7 Drums of Tablets. Default decree of condemnation and destruction. (F. & D. No. 40990. Sample No. 9641–C.)

This product contained a smaller amount of maleic acid per tablet than it was represented to contain.

On December 1, 1937, the United States attorney for the Southern District of California, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of seven drums containing 318,400 maleic acid tablets at Los Angeles, Calif., alleging that the article had been shipped in interstate commerce on or about August 18 and September 3, 1937, by Shores Co. from Cedar Rapids, Iowa, and charging adulteration in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that its strength fell below the professed standard and quality under which it was sold, since each tablet was

represented to contain 2 grains of maleic acid; whereas each tablet contained less than 2 grains, namely, not more than 1.39 grains, of maleic acid.

On March 2, 1938, no claimant having appeared, judgment of condemnation was entered and the product was ordered destroyed.

W. R. GREGG, *Acting Secretary of Agriculture.*

28685. Adulteration and misbranding of gauze bandage. U. S. v. 48 Dozen Packages of Gauze Bandage. Tried to the court and a jury. Jury excused before verdict. Judgment of condemnation and destruction. Affirmed by circuit court of appeals. (F. & D. No. 37890. Sample No. 72823–B.)

This article was not sterile, as represented on the label.

On July 14, 1936, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the district court a libel praying seizure and condemnation of 48 dozen packages of gauze bandage at New York, N. Y., alleging that the article had been shipped in interstate commerce on or about May 15, 1936, from Bridgeport, Conn., by the Bay Co., and charging adulteration and misbranding in violation of the Food and Drugs Act.

The article was alleged to be adulterated in that its purity fell below the professed standard and quality under which it was sold, namely, on the carton "Sterilized," and in that it was not sterilized but did contain anaerobic bacteria and gram-positive and gram-negative bacilli capable of growing under aerobic conditions.

It was alleged to be misbranded in that the statement appearing on the package, "Sterilized," was false and misleading in that the article was not sterilized.

The Bay Co., of Bridgeport, Conn., having filed an answer, the case was tried before the court and a jury, on April 13, 14, and 15, 1937. A motion for a directed verdict was then made by each of the parties. Whereupon, a jury verdict was waived, the jury was discharged and decision of the issues was reserved by the court. On May 27, 1937, the court rendered the following opinion:

INCH, *District Judge:* "The United States duly commenced the above entitled action whereby the condemnation is sought of a quantity of gauze bandages manufactured by the Bay Company of Bridgeport, Connecticut, and shipped by it from that state, in interstate commerce, to New York City, where they were seized in the possession of Parke, Davis & Company, New York City, State of New York.

"The action is brought pursuant to the provisions of the Federal Food and Drugs Act of June 30, 1906 (34 Stat. L. 768, as amended, 37 Stat. L. 316, 732). There is no question as to jurisdiction. Many of the essential facts are admitted.

"The Bay Company duly filed a claim to the merchandise and likewise filed an answer to the libel, in this it denies that 'bandages' are within the definition of a 'Drug,' as defined in the statute in question. It also denies that the bandages are 'adulterated' or 'misbranded.'

"The above issues duly came on for trial before a jury and both sides later moved for a directed verdict. The court thereupon reserved decision, the jury was excused, and the duty now rests upon the court to make proper findings and decision in the place of a verdict.

"While, unless duly agreed to, any statement by the court in this decision as to facts for the purpose of presentation of its decision is not to be considered as taking the place of findings, nevertheless, it is necessary that the court state at the outset what it believes these facts to be.

"These facts briefly are that on or about May 15, 1936, the Bay Company manufactured and shipped to Parke, Davis & Company approximately 48 dozen packages of gauze bandages. These bandages were contained in cartons, each of which contained a dozen bandages, these individual bandages, in turn, being enclosed in separate cartons.

"The label on the large carton containing the dozen packages is as follows:

One Dozen

4 Inches — 10 Yards

Bay's
Gauze Bandages

Absorbent — Sterilized

The Bay Company
Bridgeport, Connecticut
A Division of
Parke, Davis & Co.